

STATUS OF CLAIMS

Claims 1-14 are pending.

Claims 1-14 stand rejected by the Examiner.

Claim 15 has been newly added, herein.

REMARKS

Reconsideration of the present Application is respectfully requested.

Response After Final

Entry of this Response is respectfully requested on the ground that this Response places the application in condition for allowance. Alternatively, entry of this Response is respectfully requested on the ground that this Response places the claims in better form and condition for appeal. Furthermore, Applicant submits that any arguments or amendments made regarding the claims do not require an additional search on the part of the Office, nor do any arguments or amendments made herein raise new issues with regard to the patentability of the claims now pending.

Claim Rejections Pursuant to 35 U.S.C. §102(b)

Claims 1-7 have been rejected under 35 U.S.C. §102(e) as being anticipated by Babaev (U.S. Patent Application No. 2002/015640). Applicant respectfully traverses these rejections for at least the following reasons.

35 U.S.C. §102 recites, in part:

A person shall be entitled to a patent unless-

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Consistently, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *See, M.P.E.P. §2131 citing Verdegall Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).*

Applicant respectfully submits that the cited reference does not teach each of the limitations of independent claim 1, as amended. Specifically, Babaev does not teach a method for treating tissue burns using at least one wearable ultrasonic signal emitting device that is at least in indirect contact with said tissue.

The Examiner continues to assert that Babaev teaches the signal emitting device is at least in indirect contact with the tissue, and claims support for this can be found at paragraphs [0005-0006] (See present Office Action at page 3). Applicant submits in earnest that Babaev teaches nothing of the sort. Babaev discloses a method and device for spraying a wound surface with compounds for wound treatment and cleaning. Specifically, the ultrasonic waves are applied to the wound without requiring direct or indirect contact between the ultrasonic wave transducer and the wound to be sprayed (Babaev at page 1, paragraph 14). **A transmitting device that sprays a substance through the air is NOT in either direct or indirect contact with the surface area being sprayed.** The Examiner has referenced the background of the invention, which actually teaches

away from any such contact. This is very different from the system and method as claimed in the present invention. The method of Claim 1 includes the ultrasonic signal emitting device being **at least in indirect contact** with the tissue to be treated. An illustration of such indirect contact can be seen in Figures 1-2 and 10-11 of the present Application. Applicant respectfully submits that “indirect contact”, as used in Claim 1, requires the signal emitting device to at least be in physical contact with “something”, while at the same time that “something” is itself in physical contact with the tissue. Because Babaev teaches the signal emitting device spraying a substance through the air, contact between the signal emitting device and the tissue is ultimately lost.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. 102(e) rejection of Claim 1, as Babaev fails to teach the invention recited in Claim 1. Further, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. 102(e) rejections of Claims 2-7, and for that matter, all of Claims 2-14, as these claims ultimately depend from a patentably distinct independent base Claim 1.

Rejections based on 35 U.S.C. § 103(a)

Claims 8-11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Babaev, in view of Bommannan (U.S. Patent No. 5,115,805). Claims 12-14 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Babaev, in view of Mauchamp (U.S. Patent No. 6,537,224). Claim 13 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Babaev, in view of Zhang (U.S. Patent Application No. 2002/0096973). Applicant respectfully traverses these rejections for at least the following reasons.

35 U.S.C. 103(a) sets forth in part:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

For at least the reasons set forth above, independent Claim 1 is patently distinguishable over the art of record. The present office action does not point to any portion of the 103 references alleged to teach any elements of Claim 1 other than those addressed with respect to the 102 rejection discussed hereinabove. Therefore, Claims 8-14 are similarly distinguishable over the art of record, as these claims ultimately depend from a patentably distinct base Claim 1. Additionally, because the art of record does not teach each of the limitations of Claims 1-14, there can be no suggestion or motivation to modify any single reference or to combine these reference teachings to meet each of the limitations of at least Claim 1, and consequently all of Claims 1-14.

Newly Added Claim

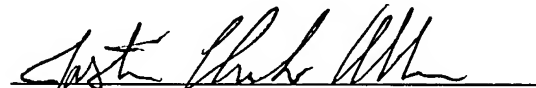
For the same reasons as set forth above, Applicant respectfully submits that newly added Claim 15 is patentably distinguishable over the cited art of record. Specifically, none of the references, either separately or in combination, teach a method of treating tissue including the affixing of at least one ultrasonic signal emitting device in at least partial contact with a transdermal apparatus having associated with it a medicament, where emmittence of at least one ultrasonic signal from the ultrasonic signal emitting device effectuates movement of at least a portion of the medicament into the tissue.

CONCLUSION

Wherefore, Applicant believes that all outstanding grounds raised by the Examiner have been addressed and respectfully submits the present case is in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or outstanding matters, the Examiner is cordially invited and requested to contact Applicant's undersigned attorney at his number listed below.

Respectfully submitted,

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